IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2735 OF 2005

Sanjay Jaywant Gaikwad ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Ganesh Gole i/b Mr.Rajeev M.Sawant for Applicant.

Mr.P.D.Gharat for C.B.I.

Mr.K.V.Saste, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 28, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Application, though filed under Section 227 of the Criminal Procedure Code, Counsel for the Applicant fairly accepts that the said description indicated in the cause-title of the Application is inappropriate, whereas, the present Application be treated as one under Section 482 of

the Criminal Procedure Code.

3. On the oral request made by the learned Counsel for the Applicant, the Application is treated as one under Section 482 of the Code and arguments were proceeded on merits.

4. The Application takes exception to the order dated 4th May 2005 passed by the Special Judge, Greater Bombay, rejecting discharge Application preferred by the Applicant before the Trial Court, for the reasons recorded in the said order. The Trial Court has adverted to facts, which emerge from the supporting documents placed by the prosecution before the Court, as mentioned in Para 15 of the impugned order.

5. Insofar as, accused No.2 Sanjay Gaikwad/Applicant before this Court is concerned, contends Mr.Gole appearing for the said accused that accepting the prosecution case as it is, for the time being, there is no legal evidence to proceed against the Applicant/accused No.2, for being party to the commission of the crime. It is

submitted that the only evidence that has been adverted to, to indicate the complicity of the Applicant is the statement of Anil Bambani, son of Jai Ram Bambani, who has stated that the Applicant and co-accused Ramratan Shrinivas Soni, used to visit the Office of the prime accused Telgi. He has further stated that when he was present in the chamber of prime accused, the Applicant had visited his Office when prime accused Telgi enquired with the Applicant as to whether he had brought Special Adhesive Stamps. In response, the Applicant told the prime accused in the affirmative and handed over a packet to the prime accused Telgi, whereupon, the prime accused Telgi asked the said witness Bambani to leave his chamber.

6. Counsel for the Applicant contends that this evidence, by no standards, indicate that the Applicant used to supply Adhesive Stamps to prime accused Telgi. Moreover, what was contained in the packet, has not been spelt out by this witness. As also as to what deliberations took place between the Applicant and the prime accused Telgi, is not revealed.

7. Besides, the evidence of this witness would be relevant only for the period between October and November 1995, when he was engaged with the prime accused, whereas, the incident in question is stated to have taken place much prior to that, on 3rd June 1995. It is then contended that statement of this witness has been recorded by the C.B.I. as recently as in 2004 and the earlier two investigating agencies have not done so, which also indicates that the statement of this witness has been recorded only to support the version occurring in the letter sent by prime accused Telgi dated 1st June 1995 to M/s.Purnanand & Co. and copy whereof, was marked to Superintendent of Stamps, Bombay, disclosing that the offending Adhesive Stamps were supplied by the present Applicant Sanjay Gaikwad.

8. There is no substance in the submission as is canvassed before this Court. The fact whether the evidence of Bambani is trustworthy and can be accepted, is a matter for trial. That statement has been recorded to support the fact that the

Applicant was the source of supply of Adhesive Stamps to prime accused Telgi, which fact is spelt out from the letter of prime accused Telgi dated 1st June 1995. The fact that this statement is recorded for the first time in 2004 by the C.B.I., will make no difference for examining the point in issue. If it is so, at this stage, it is not possible to even remotely suggest that the evidence of witness Anil Bambani is inadmissible as such, so as to ignore the same, nor the same is irrelevant. It is only if this Court was to observe that the evidence in the form of letter sent by Telgi dated 1st June 1995 to M/s.Purnanand & Co., copy whereof was marked to Superintendent of Stamps, Bombay, or for that matter, statement of Anil Bambani was inadmissible evidence or not legal evidence, would this Court be justified in ignoring that evidence and discharge the Applicant on that count. That is not the submission of the Applicant, but the attempt is to persuade this Court that the version of Anil Bambani is untrustworthy or unacceptable.

9. As mentioned earlier, that will be matter for trial and cannot be the basis to discharge the

Applicant. In my opinion, it is not possible to depart from the conclusion reached by the Court below in rejecting the discharge application preferred by the Applicant, having regard to the nature of material on record to suggest that the Applicant was the source of supplying Adhesive Stamps to the prime accused Telgi. Besides, there is evidence regarding effacement or cancellation of the Special Adhesive Stamps, though recovered from the possession of the co-accused Ramratan Shrinivas Soni. Suffice it to observe, it is not possible to sustain the argument that there is no legal evidence against the Applicant herein, to indicate his complicity in the commission of crime in question.

10. The Applicant along with co-accused are charged with offence of criminal conspiracy, and therefore, in view of the nature of material on record, there is no question to discharge the Applicant. Hence, dismissed.

A.M.KHANWILKAR, J.